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ISALAH MOSBY,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

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No. 18A02-0707-CR-621

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnett, Judge
Cause No. 18C03-0607-FA-14

APRIL 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant Isaiah Mosby appeals his conviction of dealing in a controlled substance, a Class A felony and maintaining a common nuisance, a Class D felony. We affirm.

ISSUES

Mosby raises two issues for our review, which we restate as:

- I. Whether Mosby's arrest was supported by probable cause.
- II. Whether the trial court properly admitted evidence regarding the buy money that was used in the controlled buy.

FACTS AND PROCEDURAL HISTORY

On July 24, 2006, the Drug Task Force was conducting an investigation of Mosby and arranged for an informant to make a controlled buy. Delaware County Sheriff's Deputy Jeff Stanley met with the confidential informant at a Village Pantry and instructed the informant to call Mosby and arrange to buy methadone from him.

After the informant made the call, Deputy Stanley searched the informant's person and vehicle and found no drugs or money. He gave the informant \$500.00 in pre-recorded buy money and also fitted the informant with a wire. Deputy Stanley and other officers maintained visual surveillance of the informant at all times. No one else was with the informant in his car or approached the informant.

Mosby drove into the parking lot of the Village Pantry and parked next to the informant's car. The informant entered the front seat of Mosby's vehicle briefly and then

exited after a minute or two. Mosby drove away. The informant turned over to Deputy Stanley a pill bottle containing 191 pills, later identified as methadone, and \$40.00 of the pre-recorded buy money. Deputy Stanley again searched both the informant's person and car and did not find any other drugs or money.

Other officers stopped Mosby's vehicle as he was driving away. The officers found \$460.00 in Mosby's front pants pocket.

Prior to trial, Mosby filed a motion for disclosure of the identity of the confidential informant. The State objected to the motion, and the trial court denied Mosby's motion.

Mosby also filed a motion to suppress prior to trial, arguing that the officers did not have probable cause to arrest him. The trial court denied the motion, finding that there was probable cause established even without any testimony from the confidential informant. During the trial, Mosby renewed his suppression arguments and also objected on relevancy grounds to testimony regarding the \$460.00 that was recovered from him after the buy. The trial court overruled these objections and admitted the evidence.

DISCUSSION AND DECISION

I. PROBABLE CAUSE

Mosby contends that there was no probable cause for his arrest. Specifically, he argues that the trial court's denial of his motion to identify the confidential informant made it impossible for him to ascertain whether the informant was trustworthy under *Coleman v. State*, 847 N.E.2d 259 (Ind. Ct. App. 2006), *trans. denied*.

Initially, we note that Mosby makes no argument that any evidence should be suppressed. "[T]he illegality of an arrest affects only the admissibility of the evidence

obtained as a result thereof or of a search following it. It does not affect the right of the State to try the arrestee.” *Mendez v. State*, 267 Ind. 67, 367 N.E.2d 1081, 1083 (1977). Accordingly, Mosby’s challenge to the probable cause is a moot question and any challenge has been waived. *Id.*

Waiver notwithstanding, we also note that Mosby’s arrest was supported by probable cause. Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, “the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect has committed a [felony].” *Ware v. State*, 859 N.E.2d 708, 720 (Ind. Ct. App. 2007), *trans. denied*, (quoting *Griffith v. State*, 788 N.E.2d 835, 840 (Ind. 2003)). Probable cause requires only the probability, not a *prima facie* showing, of criminal activity.” *Illinois v. Gates*, 462 U.S. 213, 235, 103 S.Ct. 2317, 2330, 76 L.Ed.2d 527 (1983).

Deputy Stanley personally observed the informant enter Mosby’s vehicle and exit that vehicle a moment later. Within seconds, the informant handed Deputy Stanley a pill bottle containing 191 pills and \$40.00 of the pre-recorded buy money. Deputy Stanley had searched the informant’s person and vehicle both prior to and after the buy and knew there were no drugs or money in either location. He knew from his personal observation that no one else had approached the informant and that Mosby and the informant were the only occupants of Mosby’s vehicle. These facts warrant a person of reasonable caution to believe that Mosby had sold the pills to the informant.

Furthermore, we note that Mosby’s reliance on *Coleman* is misplaced. In *Coleman*, no drug buy was made by the confidential informant, therefore making the case

analogous to anonymous tip cases that require some inquiry into the credibility of the informant who provided the tip. *Coleman*, 847 N.E.2d at 261-64. Here, the arrest came after a controlled buy that was observed by law enforcement officers, and the confidential informant's credibility was not at issue. Indeed, the confidential informant provided no testimony or evidence at trial.

II. ADMISSION OF EVIDENCE

Mosby contends that the trial court erred in admitting State's Exhibit #3 "without establishing the relevancy." Appellant's Brief at 14. Specifically, he argues that the State failed to connect the Exhibit's contents, consisting of photocopies of the buy money, to him before admission of the photocopies.

The admission of evidence is within the sound discretion of the trial court, and a decision whether to admit evidence will not be reversed absent a showing of manifest abuse of discretion by the trial court resulting in the denial of a fair trial. *Johnson v. State*, 831 N.E.2d 163, 168-69 (Ind. Ct. App. 2005), *trans. denied*. For a decision to be an abuse of discretion, it must be clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* at 169.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Ind. Evidence Rule 401. Prior to the admission of Exhibit #3, Officer Stanley testified that the buy money was being used during the controlled buy and that the confidential informant no longer possessed most of it after meeting briefly with Mosby. Before Exhibit #3 was introduced, the State had already

introduced evidence that the confidential informant was given \$500.00, that after meeting with Mosby the informant had only \$40.00 of that money, that the informant now had pills he did not possess previously, and that \$460.00 was recovered from Mosby's pants pocket. This testimony was sufficient to connect the pre-recorded buy money to Mosby under the general relevancy standard. Thus, the trial court did not abuse its discretion in admitting Exhibit #3.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.